

REMARKS

Claim 4 was objected to. Line 2 and line 11 have been amended to recite a temporary retaining wall. These amendments should obviate the Examiner's objection.

The Examiner is thanked for the telephone interview so courteously granted applicant's attorney on April 13, 2005, and the follow-up telephone interview on April ___, 2005. The amendments set forth above were discussed.

The rejection of Claims 1-5 under 35 U.S.C. § 103(a) as being unpatentable over Peirce, Jr. et al. (Peirce) in view of Calandra, Jr. et al. (Calandra) is respectfully traversed.

Independent Claim 1 has also been amended to recite that the temporary retaining wall is cementitious as disclosed in the specification. Moreover, the filler material is also defined as being cementitious and being integrated with the cementitious temporary retaining wall. The separate lateral load-bearing wall is also formed inwardly of the temporary cementitious retaining wall and encases the soil nails. In addition, Claim 4 has been amended to filling the holes containing the shearable reinforcing rods with and forming an integrated temporary retaining wall from cementitious material. The permanent wall is then formed inwardly of the temporary retaining wall encasing the reinforcing rods. Both Claims 1 and 4 recite that the adjoining property is capable of excavation and that the soil nails are capable of being sheared when the adjoining property is excavated.

Peirce discloses placing a steel distribution member 24 in front of a back filled bin-type wall. Tie back rods are then joined to the steel wall and extend through the bin-type retaining wall 10 and are tied by various means to the soil behind the bin-type wall. This is done with an inner anchorage 21 that is not disclosed or defined in Peirce. Peirce does not disclose formation of a temporary cementitious wall that is integrated with cementitious material that surrounds the soil nails comprising an easily shearable reinforcing rod. The filler material utilized around the

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS™
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

reinforcing rod is cementitious and is joined with the cementitious temporary retaining wall to form an integrated structure. The separate lateral load-bearing wall is then formed inside the temporary cementitious retaining wall to encase the soil nails as well as the temporary wall. Moreover, there is no disclosure of utilizing a shearable anchor in Peirce.

Calandra does show the use of a shearable-type elongated rod that is tied back with temporary bearing blocks 60 on the inner wall of a tunnel. The purpose of utilizing the polymeric rods in Calandra is so that if a boring device or rotating shearer contacts the anchor assembly, it can shear at the wall interface and thus not damage the shearing device. See, for example, Col. 12, line 27 *et seq.* There is no disclosure whatsoever in Calandra of extending a shearable member into adjacent property so that it can purposefully be sheared at a later time without damaging excavating equipment exterior from the location where the rods are assembled. Furthermore, there is no disclosure in Calandra of surrounding the rod with cementitious material that is tied to a retaining wall. Instead, Calandra discloses using a curable resin that surrounds the rod and is bonded not only to the rod but also to the floor surrounding the rod.

Thus, there is no hint or suggestion of applicant's invention as now defined in the claims as amended. As pointed out in the specification, applicant's invention solves a major problem in building construction where soil nails are utilized to tie a temporary retaining wall to the adjacent property. By using applicant's invention, the need to remove soil nails after the permanent wall is installed is eliminated. Instead, when the adjoining property is later excavated, the shearable rods can be broken or sheared by excavating equipment without damage to that excavating equipment. This result is neither suggested nor hinted at in either the Peirce or Calandra references.

LAW OFFICES OF
CHRISTENSEN OCONNOR JOHNSON KINDNESS, PLLC
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

It is submitted that the Examiner has failed to show a *prima facie* case of obviousness. Therefore, his rejection under 35 U.S.C. § 103 must fall. The Examiner is therefore respectfully requested to reexamine the application, and to reconsider withdrawing the objection and the rejection in view of the foregoing amendments and remarks.

If the Examiner still has doubts with regard to the patentability of the above-identified application, he is specifically requested to call applicant's attorney at the number listed below to discuss the matter further. Applicant's attorney works in Seattle and thus is on Pacific Standard Time. The Examiner is respectfully requested to take this timing into account.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

Lee E. Johnson
Registration No. 22,946
Direct Dial No. 206.695.1701

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: _____

LEEJmk/maw

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100